IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.375 of 2006

Decided on: September 4, 2006

Madan Lal @ Madan Singh and another .....Appellants.

VERSUS

Manohar Lal and others .....Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellants : Mr. G.D. Verma, Senior Advocate, with Mr. B.C. Verma, Advocate.

For the respondents : Nemo.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondent No.1 Manohar Lal filed a suit for declaration that he was owner in possession of Plot No.63 in New Mandi Township Area, Saproon, Solan, which had been purchased at an auction by his father in the year 1940 and that on the death of his father he inherited the same. He alleged that during the recent settlement, Plot No.63 had been assigned Khasra Nos.707 and 708. It was further stated that the present appellants, who were impleaded as defendants No.3 to 5, made an application to the Settlement Officer that in the course of settlement, area of their own old Khasra No.298/262/1 had been reduced and that the same be made up. The Settlement Officer passed order, dated 20.10.1992, on that application, whereby Khasra No.707 and 708 were ordered to be

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Whether the reporters of the local papers may be allowed to see the judgment?

entered in the ownership and possession of the appellants on account of deficiency in their area of old Khasra No.298/262/1 during recent settlement. Plaintiff alleged that no notice of the said application was issued to him nor was he heard by the Settlement Officer and that when he came to know about the passing of such an order he filed an appeal before the Divisional Commissioner, but by then limitation prescribed for filing the appeal had expired and so his appeal was dismissed, on account of being barred by time. Therefore, he filed a suit for declaration that the order dated 20.10.1992 passed by the Settlement Officer and the order dated 11.3.1996 of the Divisional Commissioner, whereby his appeal was dismissed, were illegal, void and without jurisdiction.

3. The two Courts below have held that since the plaintiff-respondent had not been heard and his property, bearing Khasra Nos. 707 and 708, had been ordered to be shown in the ownership and possession of the appellants-defendants (without hearing him or affording an opportunity to him to defend himself), the order of the Settlement Officer was violative of the principles of natural justice and, hence, without jurisdiction. The two Courts below have, therefore, decreed the claim of the respondent-plaintiff.

4. Submission made by the learned counsel for the appellants is that the two Courts below have not examined the merits of the case in the sense that it has not been decided whether Khasra Nos.707 and 708 have been assigned in respect of the area of Plot No.63 that was allegedly purchased by the father of the plaintiff at an auction in the year 1940 or part of Khasra No.298/262/1, which was the property of the appellants prior to settlement. It is true that the

two Courts below have not gone into this question. The judgments of the two Courts below show that perhaps the Courts were not called upon to go into this aspect of the matter. The Courts have confined their finding only to the validity of the order of the Settlement Officer on the sole ground that the plaintiff-respondent had not been afforded any opportunity of being heard and thus principles of natural justice had been violated. The question, whether Khasra Nos.707 and 708 have been assigned for the old Plot No.63 that was purchased by the plaintiff's father in 1940 or they are parts of old Khasra No.298/262/1 of the appellants, remains open. The appellants, if so advised, may again approach the Settlement Officer/ Revenue Authorities for making-up the deficiency in the area of their old Khasra No.298/262/1 and in case Settlement Officer/Revenue Authorities, in the course of hearing of such application, feel that the area of Khasra Nos.707 and 708 was earlier part of Khasra No.298/262/1, he/they, after issuing notice to the respondent-plaintiff, who in the settlement record has been shown to be the owner of these Khasra numbers, determine such question, after holding proper enquiry.

5. No substantial question of law arises. Hence, the appeal is dismissed.

CMP No.715/2006

Infructuous.

September 4, 2006(sd) **(Surjit Singh), J.**